



6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0849; FRL-9760-4]

Revisions to the California State Implementation Plan, Placer
County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_x), and particulate matter (PM) emissions from open burning. We are approving local rules that regulate this emission source under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2012-0849, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and

be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947-4118, Kay.Rynda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Amended	Submitted
PCAPCD	102	Definitions	02/09/12	04/25/12
PCAPCD	301	Nonagricultural Burning Smoke Management	02/09/12	09/21/12
PCAPCD	302	Agricultural Waste Burning Smoke Management	02/09/12	09/21/12
PCAPCD	303	Prescribed Burning Smoke Management	02/09/12	09/21/12
PCAPCD	304	Land Development Burning Smoke Management	02/09/12	09/21/12
PCAPCD	305	Residential Allowable Burning	02/09/12	09/21/12
PCAPCD	306	Open Burning of Nonindustrial Wood Waste at Designated Disposal Sites	02/09/12	09/21/12

On January 7, 2012 and October 11, 2012, EPA determined that

the submittals for PCAPCD Rule 102 and PCAPCD Rules 301-306 respectively, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of Rule 102 into the SIP on June 29, 1999 (64 FR 34558). PCAPCD adopted revisions to the SIP-approved version on February 9, 2012 and CARB submitted them to us on April 25, 2012.

PCAPCD has jurisdiction over portions of the Lake Tahoe Air Basin (LTAB), Mountain Counties Air Basin (MCAB), and Sacramento Valley Air Basin (SVAB). From 1979-1986 these air basin portions adopted open burning regulations, which were approved by us for inclusion into the SIP. On October 19, 1993 PCAPCD adopted a unified set of 25 open burning rules to apply district-wide, replacing the rules governing each air basin portion. CARB submitted them to us on November 30, 1994. EPA staff identified several approvability issues with the submitted rules and on May 21, 1999 PCAPCD requested that ARB withdraw these rules to be replaced with a revised submittal at a later date.

On February 10, 2011, PCAPCD adopted six new open burning rules (PCAPCD Rules 301-306), which updated and consolidated the 25 open burning rules, and submitted them to us on September 27, 2011. PCAPCD adopted revisions to Rules 301-306 on February 9, 2012 and CARB submitted them to us on September 21, 2012 to apply

district-wide and requested that they supersede the individual air basin SIP approved rules listed in Table 2 below. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

Table 2 - Rules to be Superseded

Local Agency	Rule #	Rule Title	Adopted/Amended	EPA Approval (Citation)
LTAB	301	Prohibitions on Open Burning	06/19/79	05/18/81 (46 FR 27115)
LTAB	302	Burning Permits	06/19/79	05/18/81 (46 FR 27115)
LTAB	303	Permit Validity	06/19/79	05/18/81 (46 FR 27115)
LTAB	304	No Burn Days	06/19/79	05/18/81 (46 FR 27115)
LTAB	305	Agricultural Burning Reports	06/19/79	05/18/81 (46 FR 27115)
LTAB	306	Amount Burned Daily	06/19/79	05/18/81 (46 FR 27115)
LTAB	307	Approved Ignition Devices	06/19/79	05/18/81 (46 FR 27115)
LTAB	308	Restricted Burning Days	06/19/79	05/18/81 (46 FR 27115)
LTAB	310	Minimum Drying Times	06/19/79	05/18/81 (46 FR 27115)
LTAB	311	Exceptions to Rule 310	06/19/79	05/18/81 (46 FR 27115)
LTAB	312	Burning of Rice Straw and Stubble	N/A	06/14/78 (43 FR 25684)

Local Agency	Rule #	Rule Title	Adopted/Amended	EPA Approval (Citation)
LTAB	312	Preparation of Materials to be Burned	06/19/79	05/18/81 (46 FR 27115)
LTAB	313	Burning of Agricultural Waste	06/19/79	05/18/81 (46 FR 27115)
LTAB	314	Range Improvement Burning	06/19/79	05/18/81 (46 FR 27115)
LTAB	315	Forest Management Burning	06/19/79	05/18/81 (46 FR 27115)
LTAB	317	Right of Way Clearing and Levee, Ditch and Reservoir Maintenance Burning	06/19/79	05/18/81 (46 FR 27115)
LTAB	318	Open Burning Conducted by Public Officers	06/19/79	05/18/81 (46 FR 27115)
LTAB	319	Hazard Reduction Burning	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	301	Prohibitions on Open Burning	04/21/81	04/23/82 (47 FR 17486)
MCAB/ SVAB	302	Burning Permits	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	304	Permit Validity	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	305	No Burn Days	05/27/86	04/10/89 (54 FR 14224)
MCAB/ SVAB	306	Exceptions to Rule 305	04/21/81	04/23/82 (47 FR 17486)
MCAB/ SVAB	307	Agricultural Burning Reports	05/20/85	07/12/90 (55 FR 28622)
MCAB/ SVAB	308	Amount Burned Daily	06/19/79	05/18/81 (46 FR 27115)

Local Agency	Rule #	Rule Title	Adopted/ Amended	EPA Approval (Citation)
MCAB/ SVAB	309	Approved Ignition Devices	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	310	Restricted Burning Days	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	312	Minimum Drying Times, Sections A, B, and E	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	312	Minimum Drying Times, Section C	05/20/85	02/03/87 (52 FR 3226)
MCAB/S VAB	313	Exceptions to Rule 312	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	314	Preparation of Materials to be Burned, Sections A-C	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	314	Preparation of Materials to be Burned, Section D	05/20/85	02/03/87 (52 FR 3226)
MCAB/ SVAB	315	Burning of Agricultural Waste, Section A	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	315	Burning of Agricultural Waste, Sections B-H	05/20/85	02/03/87 (52 FR 3226)
MCAB/ SVAB	316	Range Improvement Burning	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	317	Forest Management Burning	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	319	Right of Way Clearing and Levee, Ditch and Reservoir Maintenance Burning	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	320	Open Burning Conducted by Public Officers, Sections A-E	06/19/79	05/18/81 (46 FR 27115)

Local Agency	Rule #	Rule Title	Adopted/ Amended	EPA Approval (Citation)
MCAB/ SVAB	320	Open Burning Conducted by Public Officers, Preamble	05/20/85	02/03/87 (52 FR 3226)
MCAB/ SVAB	321	Hazard Reduction Burning	06/19/79	05/18/81 (46 FR 27115)
MCAB/ SVAB	324	Residential Rubbish Burning	05/20/85	02/03/87 (52 FR 3226)
MCAB/ SVAB	325	Recreational Open Fires	04/21/81	04/23/82 (47 FR 17486)

C. What is the purpose of the submitted rule revisions?

VOCs and NO_x help produce ground-level ozone and smog, which harm human health and the environment. PM emissions are also harmful to human health and the environment, by causing, among other things, premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOCs, NO_x, and PM emissions. Rules 301-306 limit emissions of air pollutants, including VOCs, NO_x and PM, which result from open burning.

The purpose of Rules 301-306 was to reorganize the District's existing rules into six new rules based on burn type, for clarity and ease of understanding; to incorporate amendments to the California Code of Regulations, Title 17, Division 3,

Chapter 1, Subchapter 2, Smoke Management Guidelines for Agricultural and Prescribed Burning; to incorporate the requirements of California Code of Regulations, Title 17, Division 3, Subchapter 7.5, §93113, Airborne Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning; and to address approvability issues identified in previous SIP submittals. Rule 102 adds new or revised definitions associated with Rules 301-306, as well as several other minor administrative revisions. EPA's technical support documents (TSDs) for these rules have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice," (Blue Book), notice of availability published in the May 25, 1988 Federal Register.
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little

Bluebook).

PCAPCD regulates an ozone nonattainment area (40 C.F.R. Part 81).¹ CAA §172(c)(1) requires nonattainment areas to implement all reasonably available control measures (RACM) as expeditiously as practicable. Open burning emits PM-10 and PM-2.5 directly, as well as VOCs and NOx, which are precursors to ozone and PM-2.5. Therefore, PCAPCD must implement RACM for open burning if those measures will advance attainment of the National Ambient Air Quality Standard (NAAQS) for PM-2.5 or ozone, when considered collectively with other reasonable measures. Additional control measures may be required pursuant to CAA §172(c)(1) if both: (1) additional measures are reasonably available; and (2) these additional reasonably available measures will advance attainment in the area when considered collectively.

PCAPCD is currently designated attainment for PM-10 (40 CFR § 81.305). Accordingly, PCAPCD is not subject to the requirement to implement Best Available Control Measures (BACM) for PM-10 and PM-10 precursors in CAA §§189(b) and (e). Therefore, we are not evaluating the rules for compliance with BACM requirements.

B. Do the rules meet the evaluation criteria?

The changes in Rule 102, Definitions, are administrative

¹ PCAPCD also regulates a nonattainment area under the 2006 24-Hour PM-2.5 NAAQS. 40 CFR 81.305 (2010). By December 14, 2012, California must submit a revision to the SIP for this nonattainment area that provides for, among other things, implementation of all RACM as expeditiously as practicable (including RACT for existing sources). CAA section 172(a)(2)(A), (b) & (c)(1), 74 FR 58689 (Nov. 13, 2009). EPA will take action on this RACM demonstration in a

only and are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

Rules 301-306 increase enforceability by increasing clarity of requirements through having all information related to a burn type in one rule, by providing new definitions, and by increasing specificity on permit and recordkeeping requirements. Several provisions in the submitted rules, however, provide for Air Pollution Control Officer (APCO) discretion to allow burning on a No-Burn Day. EPA generally discourages SIP provisions that allow APCO discretion to independently interpret the SIP, but acknowledges that such "director's discretion may be appropriate if explicit and replicable procedures within the rule tightly define how the discretion will be exercised," (see e.g., the Little Blue Book and 52 FR 45109, November 24, 1987). We believe that all such revisions in Rules 301-306 include appropriate limitations on APCO's discretion as discussed in detail the TSD.

Rule 301-306 revisions were primarily editorial to provide a consolidated rule set and improve clarity. There are, however, several Local Rules used in the consolidation which were not previously approved into the SIP. Additionally, several new provisions are included that are less stringent than the SIP approved rules. At this time, we believe all revisions are reasonable and appropriately limited and would not cause adverse

separate future rulemaking.

affect on the NAAQS or reasonable further progress (CAA section 110(1)) as evaluated in detail in the TSD.

We believe the current Rules 301-306 require all control measures that are "reasonably available" considering technologic and economic feasibility, for reasons including the following:

1) PCAPCD Rules 302-303 implement more detailed smoke management requirements and burn authorizations for agricultural burning. EPA previously identified the implementation of a smoke management program for prescribed and agricultural burning as RACM level controls for PM-10. 2) Rule revisions (as detailed in the TSD) do not interfere with attainment of the NAAQS or reasonable further progress and overall strengthen the SIP. 3) We have compared the control requirements in PCAPCD Rules 301-306 with analogous rules in other local districts and believe they are generally as stringent as those rules. Where they are less stringent (e.g., areas of high elevation and low population), PCAPCD has provided reasonable justifications.

C. EPA recommendations to further improve the rules.

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this

approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate the rules into the federally enforceable SIP, which will supersede rules listed in Table 2.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to

approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of

the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Nitrogen
dioxide, Ozone, Particulate matter, Reporting and recordkeeping
requirements, Volatile organic compounds.

Dated: November 19, 2012

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraphs (c) (419) (i) (B) and (423) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(419) * * *

(i) * * *

(B) Placer County Air Pollution Control District

(1) Rule 102, "Definitions," amended February 9, 2012.

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(423) New and amended regulations for the following APCDs were submitted on September 21, 2012, by the Governor's designee.

(i) Incorporation by reference.

(A) Placer County Air Pollution Control District

(1) Rule 301, "Nonagricultural Burning Smoke Management," amended on February 9, 2012.

(2) Rule 302, "Agricultural Waste Burning Smoke Management," amended on February 9, 2012.

(3) Rule 303, "Prescribed Burning Smoke Management," amended on February 9, 2012.

(4) Rule 304, "Land Development Burning Smoke Management," amended on February 9, 2012.

(5) Rule 305, "Residential Allowable Burning," amended on February 9, 2012.

(6) Rule 306, "Open Burning of Nonindustrial Wood Waste at Designated Disposal Sites," amended on February 9, 2012.